

**MEMO TO:** City Council

**FROM:** Rosemarie Ives, Mayor

**DATE:** July 19, 2005

**SUBJECT: INTERLOCAL AGREEMENT WITH SOUND TRANSIT –  
REDMOND WAY TRANSIT ENHANCEMENT IMPROVEMENTS**

**I. RECOMMENDED ACTION**

By motion, approve the attached interlocal agreement (Attachment A) with Sound Transit to permit construction of transit enhancement improvements on Redmond Way between 132<sup>nd</sup> and 140<sup>th</sup> Avenues NE, illustrated in Attachment B.

**II. DEPARTMENT CONTACT PERSONS**

Roberta Lewandowski, Director, Planning and Community Development, 425-556-2447  
David Rhodes, Public Works Director, 425-556-2705  
Rob Odle, Policy Planning Manager, 425-556-2417  
Terry Marpert, Principal Planner, 425-556-2428  
Ron Grant, Construction Division Manager, 425-556-2742

**III. DESCRIPTION/BACKGROUND**

The Redmond Way transit improvements are part of a 1.3-mile transit enhancement project that is to be built in Redmond and Kirkland. The purpose of the transit enhancement project is to improve the speed and reliability of transit along SR 908 (Redmond Way and NE 85<sup>th</sup> Street) between 120<sup>th</sup> Avenue NE in Kirkland to 140<sup>th</sup> Avenue NE in Redmond. (See Attachment B for a diagram of the Redmond portion of the project.) Overall, the project improves intersections, constructs sidewalks, replaces deficient sidewalks, constructs roadway medians, and modifies some of the existing traffic signals.

Within Kirkland, NE 85<sup>th</sup> Street (Redmond Way extended) is adjacent mostly to businesses and also to a few homes. The arterial has five lanes, two in each direction, with a center two-way left-turn lane. There are five traffic signals in the Kirkland section of this project, located at the following cross streets: 120<sup>th</sup> Avenue NE, 122<sup>nd</sup> Avenue NE, 124<sup>th</sup> Avenue NE, 128<sup>th</sup> Avenue NE, and 132<sup>nd</sup> Avenue NE. The projected average daily trips (ADT) on NE 85<sup>th</sup> Street east of 120<sup>th</sup> Avenue NE is 36,470 (projected in 2004 for 2005), with trucks comprising two percent of these trips.

Redmond Existing Conditions

NE 85<sup>th</sup> Street becomes Redmond Way at the western Redmond city limit that begins along the east right-of-way line of 132<sup>nd</sup> Avenue NE. Redmond Way is also a five-lane arterial with two lanes in each direction and a two-way center left-turn lane and

residential uses on both sides. There are limited sidewalks along Redmond Way, many of which are substandard and include asphalt walkways that are two to three feet in width between 132<sup>nd</sup> and 140<sup>th</sup> Avenues NE. In several areas, pedestrians have no choice but to walk along a dirt strip or substandard sidewalk that is located adjacent to the street curb, with no separation from Redmond Way traffic lanes where vehicles travel 40 to 50 miles per hour (mph) in an area with a posted speed limit of 40 mph.

Within Redmond there is one traffic signal at 140<sup>th</sup> Avenue NE that is located within the project area. There are 41,060 ADT (projected in 2004 for 2005) on Redmond Way east of 132<sup>nd</sup> Avenue NE, with trucks comprising two percent of these trips. There are transit stops located near the intersections of Redmond Way and 132<sup>nd</sup> and 140<sup>th</sup> Avenues NE, and another stop located outside the project area near 148<sup>th</sup> Avenue NE.

#### Proposed Project

Within Redmond, the project includes the construction of a sidewalk along the north side of Redmond Way and installation of a planter strip between the sidewalk and the westbound traffic lanes. The westbound to northbound right-turn lane at the intersection of Redmond Way and 132<sup>nd</sup> Avenue NE would be extended another 700 feet, helping to improve the level-of-service at this intersection. A center median would be built between 132<sup>nd</sup> and 139<sup>th</sup> Avenues NE. The 132<sup>nd</sup> and 139<sup>th</sup> Avenues NE intersections would be widened to permit U-turns, since the proposed arterial medians restrict left-turn movements. There are no bicycle lanes proposed or planned for Redmond Way in either the existing or the proposed transportation plan, so none are included in this project. Rebuilt and retrofitted ADA ramps would be installed at the intersections with 132<sup>nd</sup> Avenue NE, 139<sup>th</sup> Avenue NE, and at 140<sup>th</sup> Avenue NE. All of these improvements are consistent with the Redmond Comprehensive Plan and the pedestrian and transit policies developed through the Transportation Master Plan process.

Several transit routes will benefit from this project. Sound Transit operates Route 540 from Redmond to Kirkland and to the University District along the entire Kirkland and Redmond sections of the project corridor. Route 540 is a continuous peak hour, midday, and evening regional express bus service. Metro operates Routes 230, 238, 254, and 277 on streets that intersect and cross NE 85<sup>th</sup> Street/Redmond Way. Route 238 also operates on NE 85<sup>th</sup> Street between 124<sup>th</sup> and 132<sup>nd</sup> Avenues NE. Routes 230, 238, and 254 are local Redmond and Kirkland routes, while Route 277 crosses Lake Washington to Seattle on the SR 520 Bridge.

The key transit benefits of this project are to improve pedestrian and bicycle access to transit routes serving the project area. Further, there are significant pedestrian safety improvements through the construction of sidewalks that meet full sidewalk width standards and that are separated from vehicle traffic lanes by a planter strip, particularly within Redmond. The extension of the westbound to northbound right-turn lane at the

Redmond Way/132<sup>nd</sup> Avenue NE intersection helps to improve vehicle through movement, including the movement of transit through the intersection.

The following construction schedule is based upon the time needed to complete final design of this project and available City staff resources being able to complete the bidding process and manage the project. The estimated schedule for completion of these tasks is as follows:

- Final Design: 3<sup>rd</sup> Quarter 2005 to 1<sup>st</sup> Quarter 2007
- Right-of-way: 4<sup>th</sup> Quarter 2005 to 1<sup>st</sup> Quarter 2007
- Bid/Award: 2<sup>nd</sup> Quarter 2007
- Construction: 3<sup>rd</sup> Quarter 2007 to 1<sup>st</sup> Quarter 2008
- Close-out: 2<sup>nd</sup> Quarter 2008

#### IV. IMPACT

##### A. Service Delivery:

The construction of the proposed transit enhancement project will provide approximately 1,700 feet of new sidewalk between 132<sup>nd</sup> and 139<sup>th</sup> Avenues NE, and reconstruct 400 feet of existing sidewalk from 139<sup>th</sup> to 140<sup>th</sup> Avenue NE. This project represents a substantial improvement in terms of pedestrian safety and access to transit along Redmond Way, including improved traffic operations at the Redmond Way/132<sup>nd</sup> Avenue NE intersection due to the extension of the westbound to northbound right-turn lane.

##### B. Fiscal:

Sound Transit is responsible for funding this project in the amount of \$1,419,000, including a contingency of \$132,680. The City may have some financial responsibility should the project cost exceed this amount; however, this will not be known until the final design work and the awarding of the project bid. Staff will work to keep the project cost under budget. Possible City funding could come from the 6-Year Transportation CIP Sidewalk Program<sup>1</sup>. Project costs are broken down as follows:

##### Design & Construction Estimated Costs

Design	\$228,580
Construction Costs	\$1,142,900
Right-of-way acquisition	<u>\$48,000</u>
<b>Total Cost</b>	<b>\$1,419,000</b>

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<sup>1</sup> Either Sound Transit or the City of Redmond may terminate the interlocal agreement should the other party be unable to fulfill their specified obligations.

**V. ALTERNATIVES TO THE STAFF RECOMMENDATION**

**A. The City could request that the project be modified** if needed to meet future land use or transportation goals. However, approval of modification requests could be altered or denied by Sound Transit.

**B. The City could decline to support the construction of this project.**

**VI. TIME CONSTRAINTS**

Approval of the Redmond Way, 132<sup>nd</sup> to 140<sup>th</sup> Avenues NE interlocal agreement allows the City and Sound Transit to begin final project design work in the second quarter of 2005 and right-of-way acquisition beginning in late 2005 through early 2007. The construction bid is expected to be awarded by the second quarter 2007, with the project completed by mid-2008.

**VII. LIST OF ATTACHMENTS**

**Attachment A:** Interlocal Agreement – Redmond Way Transit and Pedestrian Improvements, 132<sup>nd</sup> Avenue NE to 140<sup>th</sup> Avenue NE

**Attachment B:** Project Diagram – Redmond Way Transit and Pedestrian Improvements, 132<sup>nd</sup> Avenue NE to 140<sup>th</sup> Avenue NE

/s/ \_\_\_\_\_  
Roberta Lewandowski, Planning Director

7/7/05  
\_\_\_\_\_  
Date

/s/ \_\_\_\_\_  
David Rhodes, Public Works Director

7/7/05  
\_\_\_\_\_  
Date

Approved for Council Agenda: /s/ \_\_\_\_\_  
Rosemarie Ives, Mayor

7/7/05  
\_\_\_\_\_  
Date

# **ATTACHMENT A**

## **INTERLOCAL AGREEMENT BETWEEN SOUND TRANSIT AND THE CITY OF REDMOND FOR THE DESIGN, CONSTRUCTION AND FUNDING OF TRANSIT IMPROVEMENTS**

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the Central Puget Sound Regional Transit Authority (“Sound Transit”) and the City of Redmond, a municipal corporation (“City” or “Redmond”) (individually, a “Party” or collectively, the “Parties”) to provide for design, construction, and funding of certain transit-related improvements in the Redmond area.

### **R E C I T A L S**

WHEREAS, Sound Transit is a duly organized regional transit authority existing under RCW Chapters 81.104 and 81.112 with all powers necessary to implement a high capacity transportation system, including the power to implement interlocal government agreements necessary for the planning, design, construction, and operation of high capacity transportation system facilities within its boundaries, including commuter rail, light rail and regional express bus services as set forth in *Sound Move*, its voter approved regional transit system plan; and

WHEREAS, the City is a municipal corporation existing under state law with all powers necessary to supply municipal services commonly or conveniently rendered by cities and towns, including a system of streets within its corporation boundaries; and

WHEREAS, pursuant to its comprehensive plan, the City intends to construct traffic and pedestrian circulation and safety improvements to the Redmond Way corridor between 132<sup>nd</sup> Avenue NE to 140<sup>th</sup> Avenue NE within the City of Redmond; and

WHEREAS, Sound Transit and the City recognize the efficiencies and economies inherent in the joint design and development of these improvements in conjunction with related transit improvements to facilitate Sound Transit’s Regional Express bus service in this area pursuant to *Sound Move*.

NOW THEREFORE, in consideration of the assurances and covenants herein, the Parties hereby mutually agree as follows:

### **TERMS**

#### **1.0 PURPOSE**

The purpose of this Agreement is to establish the Parties’ respective rights, obligations, costs and liabilities with respect to the design, construction and funding of transit improvements along the Redmond Way corridor (“Corridor”) within the City of Redmond in conjunction with the City’s larger traffic and pedestrian improvements in this area (together, the “Work”). The Agreement shall be interpreted consistent with this purpose.

## **2.0 TERM OF AGREEMENT**

This Agreement shall become effective as of the date of execution by each Party's respective governing body, and shall expire automatically upon Sound Transit's final payment to the City consistent with the terms herein. The Parties may at their discretion amend this Agreement or enter into subsequent agreements, as desired, upon the appropriate written authorization of each Party's respective governing body or authorized representative as may be required.

## **3.0 PROJECT SCOPE AND SCHEDULE**

The Work will be located within the Corridor between 132<sup>nd</sup> Avenue NE and 140<sup>th</sup> Avenue NE within City limits, as described in the Scope of Work attached as Exhibit A. Sound Transit shall act as lead agency for environmental review and 30% design of the Work. The City shall act as lead agency for final design, permit acquisition, right-of-way acquisition, construction, and construction management for the Work.

The estimated schedule for completion of these tasks is as follows:

- Final Design: 3<sup>rd</sup> Quarter 2005 to 1<sup>st</sup> Quarter 2007
- ROW: 4<sup>th</sup> Quarter 2005 to 1<sup>st</sup> Quarter 2007
- Bid/Award: 2<sup>nd</sup> Quarter 2007
- Construction: 3<sup>rd</sup> Quarter 2007 to 1<sup>st</sup> Quarter 2008
- Close-out: 2<sup>nd</sup> Quarter 2008

## **4.0 ROLES AND RESPONSIBILITIES OF THE PARTIES**

### **4.1 City's Role and Responsibilities**

The City shall be responsible for the following in connection with the attached Scope of Work (Exhibit A):

- a. Performing a contractor selection process in accordance with the City's practices;
- b. Following the competitive bidding requirements and applicable retainage and bonding requirements of Washington State law;
- c. Administering all public works contracts required for accomplishing the City's responsibilities herein and pursuant to the attached Scope of Work (Exhibit A);
- d. Obtaining any and all permits and other related approvals;
- e. Obtaining any necessary easements or rights-of-way;
- f. Directing the performance of any utility relocation necessary in connection with the Work;
- g. Managing and performing construction and final design activities through its own vendors, contractors, engineers, consultants, and design professionals;

- h. Monitoring the quality of the work;
- i. Paying for the materials, labor and other services rendered by its contractors, vendors, engineers, consultants and design professionals, and other costs associated with the Work, until appropriate reimbursement is received from Sound Transit pursuant to Section 5.0 of this Agreement;
- j. Preparing and submitting to Sound Transit monthly invoices for reimbursement as described in this Agreement;
- k. Maintaining a financial accounting system for the Work that identifies all expenditures eligible for reimbursement under this Agreement, and that includes supporting documentation for disbursements; and
- l. Maintaining insurance as provided in this Agreement, which insurance shall name Sound Transit as an additional insured; and
- m. Monitoring the completion of the Work and ensuring Sound Transit's compliance with the terms and conditions of this Agreement; and
- n. Performing necessary coordination with Sound Transit to fulfill the requirements of this Agreement.

#### **4.2 Sound Transit's Role and Responsibilities**

Sound Transit shall be responsible for:

- a. Performing necessary coordination with the City to fulfill the requirements of this Agreement;
- b. Completing environmental review and documentation required for the Work;
- c. Managing and performing preliminary design activities through its own vendors, engineers, consultants, and design professionals;
- d. Ensuring that preliminary design work completed by Sound Transit or a consultant hired by Sound Transit, can be used by subsequent design professionals retained by the City
- e. Paying for the materials, labor and other services rendered by its vendors, engineers, consultants and design professionals, and other costs, associated with Sound Transit's responsibilities herein and pursuant to the Scope of Work (Exhibit A);
- f. Reimbursing the City for certain costs associated with the Work as provided in Section 5.0 of this Agreement; and
- g. Monitoring the completion of the Work and ensuring the City's compliance with the terms and conditions of this Agreement.

## **5.0 PROJECT BUDGET, FUNDING, AND REIMBURSEMENT**

### **5.1 Estimated Project Costs**

Cost estimates for the various elements of the Work are attached as Exhibit B to this Agreement and incorporated herein by reference. The amounts set forth in Exhibit B reflect the Parties' best estimates of the amounts that may be required to accomplish the Work, and the allocation of these amounts to each Party. Actual amounts reimbursable under this Agreement shall be based on actual work performed under this Agreement and made pursuant to its reimbursement provisions. In the event it is determined that the City has accomplished its portion of the Work for a lesser amount than identified in this Agreement, Sound Transit shall pay only for documented costs. In no event shall the City be paid for costs that are not documented pursuant to the requirements of this Agreement.

### **5.2 Project Cost Sharing**

The Parties agree to share the costs of the Work as follows:

Sound Transit agrees to contribute funding for the design of the Work at a total not to exceed of Two Hundred Twenty Eight Thousand, Five Hundred Eighty Dollars (\$228,580). This amount includes a contingency fund in the amount of Twenty Thousand, Seven Hundred Eighty Dollars (\$20,780), which may be distributed only pursuant to the terms of this Section. This total not-to-exceed amount represents the Parties' determination of the cost for design of the transit elements of the Work, minus the costs Sound Transit incurs for preliminary design and environmental review. The City will fund the cost for design of the remaining elements of the Work. If a cost savings for final design is realized, the amount of the cost savings may be transferred to the construction phase of the project.

Sound Transit agrees to contribute funding for the construction of the Work at a total not to exceed of One Million, One Hundred Forty Two Thousand, Nine Hundred Dollars (\$1,142,900). This amount includes a contingency fund in the amount of One Hundred Three Thousand, Nine Hundred Dollars (\$103,900), which may be distributed only pursuant to the terms of this Section. This total not-to-exceed amount represents the Parties' determination of the cost for construction of the transit elements of the Work. The City will fund the cost for construction of the remaining elements of the Work.

Sound Transit agrees to contribute funding for the acquisition of right-of-way necessary for the Work at a total not to exceed of Forty Eight Thousand Dollars (\$48,000). This amount includes a contingency fund in the amount of Eight Thousand Dollars (\$8,000), which may be distributed only pursuant to the terms of this Section. This total not-to-exceed amount represents the Parties' determination of the cost for right-of-way acquisition necessary to the transit elements of the Work. The City will fund the cost for any right-of-way acquisition necessary to the remaining elements of the Work.



In the event the City anticipates that the total cost of the project will exceed the overall capped amount of the project of \$1,419,480, Sound Transit shall not be obligated to reimburse the City for any expenditure in excess of the not-to-exceed amounts set forth in this Section, regardless of the actual cost of the Work, unless Sound Transit's Board of Directors ("Board") authorizes such additional funding in advance of the City incurring the additional costs and the Parties amend this Agreement upon such terms and conditions as approved by the Board. Payment shall be made from contingency funds for legitimate change orders and other unanticipated costs of the Work that are not the result of errors or omissions by the City or its contractors. Payment from contingency funds for costs other than those described in the preceding sentence shall be at the sole discretion of Sound Transit. Any request for payment from contingency funds shall be made in advance and in writing by the City for Sound Transit's review and written approval.

## **6.0 INVOICE AND PAYMENT PROCEDURES**

The City shall issue monthly invoices for reimbursement to Sound Transit's Designated Representative. Such invoices shall reference this Agreement and shall be accompanied by reasonable documentation as specified by Sound Transit. Sound Transit shall pay the amount specified in an invoice within thirty (30) days of receipt.

Upon completion of work under this Agreement and upon Sound Transit's Final Inspection and Acceptance of the Work, the City shall balance the amounts invoiced to Sound Transit against the actual amounts paid by Sound Transit, and the City shall issue a final invoice to Sound Transit. Any amounts due to the City shall be paid in a final payment within thirty (30) days of receipt of the City's final invoice.

## **7.0 INSPECTION AND ACCEPTANCE, OWNERSHIP**

The City shall allow Sound Transit to conduct reasonable and timely inspection of the Work, in coordination with the Sound Transit Designated Representative. Sound Transit shall complete its Final Inspection of the Work within seven (7) calendar days of receipt of the City's notice of completion of the Work. Within three (3) working days of completing Final Inspection, Sound Transit shall give notice of Final Acceptance of the Work to the City or shall specify in writing the work remaining to be done. The City will notify Sound Transit when the remaining items are completed, whereupon Sound Transit shall again commence Final Inspection under the process set forth herein. Disputes arising under this section will be resolved pursuant to the dispute resolution procedure provided in this Agreement.

The City shall at all times own the Work, and the City shall own, use, operate and maintain the Work pursuant to any applicable regulations, ordinances or laws, including any applicable permit, franchise, or license requirements for the use and occupancy of the public right-of-way.

## **8.0 DESIGNATED REPRESENTATIVES**

To ensure effective intergovernmental cooperation and efficiencies, the Parties have designated the following representatives (“Designated Representatives”) to coordinate communications between the Parties and to act as the central points of contact for each agency for purposes of this Agreement:

### **City of Redmond**

Terry Marpert  
City of Redmond  
P.O. Box 97010  
Redmond, WA 98073

Phone: (425) 556-2750  
Fax: (425) (425) 556-4242  
E-mail: tmarpert@redmond.gov

Ron Grant  
City of Redmond  
P.O. Box 97010  
Redmond, WA 98073

Phone: (425) 556-2742  
Fax: (425) 556-2727  
E-mail: rgrant@redmond.gov

### **Sound Transit**

Fred Wilhelm  
401 S. Jackson Street  
Seattle, WA 98104-2826  
Phone: (206) 398-5034  
Fax: (206) 398-5215  
wilhelmf@soundtransit.org

The Designated Representatives shall be responsible for coordinating the input and work of various governmental agency or department staff, consultants and contractors as it relates to the scope of this Agreement. Each Party reserves the right to change its Designated Representative by written notice to the other Party during the term of this Agreement.

## **9.0 REPORTING RESPONSIBILITIES**

### **9.1 Reports and Documentation**

The City shall furnish periodic reports and documentation to Sound Transit pursuant to this Agreement. In addition, the City shall provide documentation to verify that the City's reimbursable expenditures are related to the Work funded by this Agreement, including but not limited to: (1) work statements or payroll records; (2) invoices for materials and supplies; (3) statements from professionals for services rendered; (4) certification by Sound Transit of materials and services satisfactorily rendered; and (5) an itemized listing of the charges supported by copies of original bills, invoices, expense accounts, and miscellaneous supporting data retained by the City.

## **9.2 Availability of Records**

All project records in support of all costs incurred and actual expenditures kept by the Parties shall be maintained in accordance with procedures prescribed by the Washington State Auditor's Office. Each Party's records shall be open to inspection by the other Party and by any government personnel during normal business hours, and shall be retained and made available for such inspection for a period of not less than six (6) years from Sound Transit's final payment to the City. Copies of said records shall be furnished to the requesting Party and/or government personnel upon request. This requirement shall be included in all subcontracts related to the work entered into by the City to fulfill the terms of this Agreement. To the extent this Agreement requires any joint decisions by the parties, the Mayor of the City and the Sound Transit Capital Projects Director, or their respective designees, shall make such joint decisions.

## **9.3 Audit**

If a Party or the state or federal government requests an audit pursuant to any applicable state or federal agency requirements, the other Party shall cooperate with such audit and auditor.

## **9.4 Contract Administration**

To fulfill its respective responsibilities under this Agreement, each Party shall be solely responsible for the administration of and the completion and quality of work performed under any contracts executed by the Party. In no event shall any contract executed by a Party be construed as obligating the other Party to this Agreement. All contracts shall comply with all applicable public works and procurement laws and regulations, including, but not limited to, applicable public works and procurement laws and regulations, bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

## **10.0 ENVIRONMENTAL REVIEW, PERMITS, AND UTILITY RELOCATION**

Sound Transit shall conduct any environmental review and prepare any environmental documentation necessary to the Work. The City shall obtain any permits and approvals necessary for the use of City-controlled right-of-way and other property related to the Work.

The City shall exercise its normal powers to cause the owners of any utilities located in the public rights of way under the jurisdiction of the City to relocate or adjust utility facilities as may be required by the Work. The City will assert its right, to the extent legally permissible, to cause said relocation or adjustment necessitated by the Work at the utility owner's cost. As between the Parties, any costs associated with relocation or adjustment of utility facilities shall be borne by the Parties according to the cost-sharing provisions of this Agreement.

## **11.0 DISPUTE RESOLUTION**

The Parties shall work collaboratively and promptly in accordance with the following steps to resolve disputes arising from activities performed under this Agreement:

A. The Designated Representatives shall communicate regularly to discuss the status of the tasks to be performed pursuant to this Agreement and will use best efforts to resolve any issues or disputes related to the successful performance of this Agreement.

B. Each Designated Representative shall notify the other in writing of any problem or dispute the Designated Representative believes needs formal resolution. This written notice shall include:

- (1) a description of the issue to be resolved;
- (2) a description of the difference between the Parties on the issue; and
- (3) a summary of steps taken by Designated Representative to resolve the issue.

The Designated Representatives shall first attempt to resolve the dispute by meeting within five (5) business days of the other Designated Representative's receipt of the written notice.

C. In the event the Designated Representatives cannot resolve the dispute (and the dispute is not subject to some other formal appeal process), the Sound Transit Capital Projects Director and the Mayor or their respective designees shall meet within seven (7) business days of receiving notice from a Designated Representative and will engage in good faith negotiations to resolve the dispute. The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest possible level of authority.

D. The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted, unless the terms of Section 16 apply. The preceding sentence shall not apply to the extent that any applicable statute

of limitations will or may run out during the time that may be required to exhaust the procedural steps set forth above.

## **12.0 MUTUAL INDEMNIFICATION**

To the extent permitted by law, each Party shall protect, defend, indemnify, and save harmless the other Party, and its officers, officials, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, or are due to any tortious or negligent acts or omissions of the indemnifying Party. No Party shall be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the Party seeking indemnification. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence. The Parties agree that their obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party hereby waives, by mutual negotiation, with respect to the other Party only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the other Party shall assume all costs of defense thereof, including legal fees incurred by the other parties, and of all resulting judgments that may be obtained against the other Party. This indemnification shall survive the expiration or earlier termination of this Agreement. In the event that an action is brought to enforce any right or obligation under this indemnity agreement, all fees, costs and expenses of such action shall be recoverable by the prevailing party. The parties hereto agree that any action to enforce this indemnity agreement shall be brought in a court of competent jurisdiction situated in Seattle, King County, Washington.

## **13.0 INSURANCE**

The City shall secure and maintain in full force and effect sufficient insurance to cover any claims that may arise from its responsibilities for the Work pursuant to this Agreement, including environmental and professional liability, and will add Sound Transit as an additional insured on all such policies. The City shall further require any contractors and subcontractors it retains in connection with the Work to maintain sufficient insurance pursuant to this Section and to add Sound Transit as an additional insured on all such policies.

## **14.0 PUBLIC COMMUNICATIONS**

Neither Party shall make any formal press releases, news conferences or similar public statements concerning this Agreement without prior consultation and coordination with the other Party.

## **15.0 TERMINATION**

A. Termination for Default. Either Party may terminate this Agreement, in whole or in part, in writing, if the terminating Party substantially fails to fulfill any or all of its obligations under this Agreement through no fault of the other party, provided that insofar as practicable, the Party terminating the Agreement will give:

1. Written notice of intent to terminate at least thirty (30) calendar days prior to the date of termination stating the manner in which the other Party has failed to perform the obligations under this Agreement; and
2. An opportunity for the other Party to cure the default within at least thirty (30) calendar days of notice of the intent to terminate. In such case, the notice of intent to terminate will state the time period in which cure is permitted and any other appropriate conditions.

If the other Party fails to remedy the default or the breach to the satisfaction of the other Party within the time period established in the notice of intent to terminate or any extension thereof, granted by the Party not at fault, this Agreement shall be deemed terminated.

B. Rights and Duties of Parties Upon Termination. A termination by any Party shall not extinguish or release either Party from liability, claims or obligations to third parties existing as of the time of termination. Any costs incurred prior to proper notification of termination will be borne by the Parties in accordance with the terms of this Agreement and this Section. The indemnification provisions set forth in this Agreement and all remedial provisions shall survive termination of this Agreement. In the event of termination by default or breach, Sound Transit shall be obligated to compensate the District only for the portion of work that has been satisfactorily rendered to the date of termination.

## **16.0 GENERAL LEGAL PROVISIONS**

### **16.1 Rights and Remedies**

The rights and remedies of the Parties to this Agreement are in addition to any other rights and remedies provided by law, except as otherwise provided in this Agreement.

### **16.2 No Agency**

No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one party shall be deemed, or represent themselves to be, employees of any other party.

### **16.3 No Third Party Rights**

It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties.

### **16.4 Compliance with Laws**

Each Party shall comply, and to the best of its ability shall ensure, that its employees, agents, consultants and representatives comply with all federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed. The work performed by each Party under this Agreement shall comply with all applicable public works and procurement laws and regulations, including but not limited to bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers compensation requirements.

### **16.5 Governing Law and Venue**

This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Any legal action brought resulting from this Agreement shall be brought in the Superior Court of King County.

### **16.6 No Employee Relationship**

In performing work and services hereunder, each Party and its respective employees, agents, consultants and representatives shall be acting as an independent contractor and shall not be deemed or construed to be employees or agents of the other Party in any manner whatsoever. No employee of any Party shall hold himself/herself out as or claim to be an officer or employee of the other Party by reason of this Agreement and shall not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents, and representatives, including consultants, and shall hold the other Party harmless therefrom.

### **16.7 Waiver of Default**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of a provision of this Agreement, including failure to require full and timely performance of any provision, shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized parties, and attached to the original Agreement.

## **16.8 Assignment**

No Party shall assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party.

## **16.9 Binding on Successors and Assigns**

All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives.

## **16.10 Severability**

If any of the terms and conditions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and conditions unaffected thereby shall remain in full force and effect. The Parties agree to negotiate in good faith to reform the Agreement to replace any invalid or unenforceable term and/or condition with a valid and enforceable term and/or condition that comes as close as possible to the intention of the stricken term and/or condition.

## **16.11 Warranty of Right to Enter into Agreement**

The Parties each warrant that they have the authority to enter into this Agreement and that the persons signing this Agreement have the authority to bind such person's respective entity.

## **16.12 Exhibits**

All exhibits referenced in and attached to this Agreement are incorporated herein, except to the extent otherwise provided herein.

## **16.13 Amendments/Supplements**

The Parties reserve the right to amend this Agreement as necessary. No addition or modification to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized representative of each of the Parties.

## **16.14 Entire Agreement**

This Agreement, including its Recitals and Exhibits, embodies the Parties entire Agreement on the matters covered by it, except as supplemented by subsequent amendments to this Agreement. All prior negotiations and draft written agreements are merged into and superseded by this Agreement.



## 16.15 Notice

All notices or requests required or permitted under this Agreement shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by facsimile transmission and shall be deemed received three (3) business days following the date when mailed or on the date when delivered or faxed (provided the fax machine has issued a printed confirmation of receipt). All notices or requests sent to a Party shall be addressed to the attention of that Party's Designated Representative.

## 16.16 Execution of Agreement

This Agreement shall be executed in two (2) counterparts, any one of which shall be regarded for all purposes as one original.

**IN WITNESS WHEREOF**, the parties hereby agree to the terms and conditions of this Agreement as of the latest Sound Transit dates written below.

CITY OF REDMOND

SOUND TRANSIT

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Sound Transit Legal Counsel

**EXHIBIT A**  
**Redmond Section – Transit Enhancement Project**  
**132<sup>nd</sup> Ave NE to 140<sup>th</sup> Ave NE**

The purpose of the 85<sup>th</sup> Corridor Improvement Project is to improve the safety, circulation and operation of automobile, transit and non-motorized users of the roadway corridor to enhance the speed and reliability of Sound Transit Express Route 540. The project consists of improvements to NE 85<sup>th</sup> /Redmond Way corridor between 132<sup>nd</sup> Ave NE and 140<sup>th</sup> Ave NE including channelization, signal improvements and sidewalks. Specific improvements include:

- Extension of the westbound to northbound right turn lane at the intersection of Redmond Way and 132<sup>nd</sup> Ave NE by 700 feet.
- Construction of a center median on Redmond Way between 132<sup>nd</sup> Ave NE and 140<sup>th</sup> Ave NE.
- Construction of a sidewalk and planter strip along the north side of Redmond Way.
- Widen 132<sup>nd</sup> Ave NE and 140<sup>th</sup> Ave NE intersections to permit u-turns

**EXHIBIT B**  
**Redmond Section - Transit Enhancement Project**  
**132nd Ave NE to 140th Ave NE**

<b>Phase</b>	<b>Cost</b>	<b>Contingencies</b>	<b>Phase Total</b>
<b>PS&amp;E</b>	<b>\$207,800</b>	<b>\$20,780</b>	<b>\$228,580</b>
<b>ROW</b>	<b>\$40,000</b>	<b>\$8,000</b>	<b>\$48,000</b>
<b>Construction</b>	<b>\$1,039,000</b>	<b>\$103,900</b>	<b>\$1,142,900</b>
<b>Subtotal</b>	<b>\$1,286,800</b>	<b>\$132,680</b>	
<b>Total</b>			<b>\$1,419,480</b>

1. Funding Reimbursement is based on the project Cost Estimate dated March 2004
2. Sound Transit's Reimbursement Costs are capped at **\$1,419,480**